

PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Uhlik et al.) Examiner: Naghmeh Mehrpour
Application No: 09/813,386) Art Unit: 2617
Filed: March 20, 2001) Confirmation No: 3491
For: METHOD AND APPARATUS FOR)
RESOURCE MANAGEMENT IN A)
WIRELESS COMMUNICATION)
SYSTEM)

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Assistant Commissioner For Patents
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In response to the Final Office Action mailed April 03, 2007, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the final rejection of the claims of the above-referenced application in view of the following.

Claims 1-25 are pending in the above-referenced patent application, of which claims 1, 8, and 15 are independent claims. The independent claims are the subject of this Request. These claims were finally rejected in the Final Office Action of April 3, 2007 (hereinafter "the Final Office Action"). Applicants note that this is the second time the case is being appealed. A Pre-Appeal Brief Request for Review was filed with an Appeal, which resulted in the issuance of an Office Action on October 10, 2006 under different art. Applicants' Response to that Office Action resulted in the present Final Office Action. Applicants must again submit that the Final Office Action fails to provide a complete rejection of the claimed invention.

The independent claims were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0146129 of Kaplan et al. (hereinafter "Kaplan"). Applicants' claim 1 recites the following:

a communication device establishing a wireless communication session with a remote user terminal, the wireless communication session having associated therewith a session time limit;

the communication device **detecting a session renewal**; and
the communication device **altering the session time limit in response to detecting the session renewal**.

Claims 8 and 15 similarly recite a session renewal. No such feature is suggested in the cited references.

The following is a summary of the arguments raised in Applicants' Response filed January 16, 2007:

- The Office Action fails to assert a rejection of elements of the claimed invention. For example, Applicants' claims recite detecting a session renewal. Furthermore, a session time limit is altered in response to detecting the session renewal. There is no assertion of such teachings in the cited reference.
- Even assuming the Office Action attempted to reject the claim features mentioned above, the Office Action is very unclear as to how the reference supposedly discloses what is asserted. Thus, the Office Action fails under 37 CFR 1.104(c)(2) and MPEP § 706 to set forth the rejection with clarity and specificity so as to enable Applicants an opportunity to respond.
- Regardless of what is or is not asserted in the Office Action, the inactivity timeout period of the reference fails to disclose or suggest a session time limit as recited in Applicants' claims.

In reply to Applicants' Response, the Final Office Action provided a Response to Arguments section on pages 8 to 9. As Applicants have understood, the Response to Arguments section of the Final Office Action asserts the following:

1. The reference discloses a session.
2. The reference describes the importance of having security when having a user connect to a database via a wireless connection. The inactivity timeout period provides security.
3. The reference discloses how a user can change the period of the inactivity timeout period.

Applicants note that nothing in the Response to Arguments section of the Final Office Action, as summarized above, even addresses any of Applicants' contentions raised in the Response of January 16, 2007. Thus, the Final Office Action is non-responsive to the Response. Finality of the rejection of the claims is improper. Each of points 1-3 raised in the Final Office Action will be addressed, followed by a summary of Applicants' contentions from the Response of January 16, 2007, which have not been addressed by the Office.

Regarding point 1, Applicants did not argue whether Kaplan does or does not disclose a session. Although Kaplan discloses a session, Applicants express doubt that the session discussed in Kaplan is comparable to the session claimed; however, such an argument is not necessary to overcome the rejection and will thus be preserved.

Regarding point 2, Applicants are unable to understand the significance of the point being raised in the Final Office Action. The fact that Kaplan discusses the importance of security in connecting wirelessly to a database does not have immediately apparent significance to Applicants' claims. The detail with which the Final Office Action discussed the security issues raised in Kaplan would appear to indicate that the Office finds some significance with those teachings of the reference. However, the connection of those teachings to Applicants' claims is never explained, and Applicants submit that one skilled in the art would not understand a connection between what is argued in the Final Office Action and Applicants' claims. Applicants therefore must respectfully submit that Kaplan's teachings regarding security concerns are not shown to support a rejection of Applicants' claims, and indeed fail to support a rejection of Applicants' claims.

Regarding point 3, Applicants must again submit that the significance of the discussion in the Final Office Action is not apparent, as this section does not appear to have anything to do with Applicants' claims. In fact, the discussion of how a user can change the period of the inactivity timeout period illustrates differences between the system of Kaplan and Applicants' claims. As clearly pointed to in the Final Office Action at page 9, the length of the inactivity

timeout period can only be changed from a hardwired connection to the database (par. [0040] of Kaplan). Applicants submit that changing a timeout period from a hardwired connection to database fails to disclose or suggest Applicants' claimed invention.

As previously argued, Applicants submit that the reference fails to support a rejection of Applicants' claims for at least the following reasons. As per MPEP § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Citations omitted. In the examination, the Office should set forth clearly what is the rejection to afford Applicants the opportunity to respond. See, for example, 37 CFR 1.104 (c)(2): "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. **The pertinence of each reference, if not apparent, must be clearly explained** and each rejected claim specified." Furthermore, as per MPEP § 706, "The goal of examination is to **clearly articulate any rejection early in the prosecution process** so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." Emphasis added. The Final Office Action fails to comply with 37 CFR 1.104 (c)(2) and MPEP § 706, and fails to set forth a prima facie case of anticipation under MPEP § 2131. The Final Office Action fails to reject at least one element of the claimed invention. For example, as noted above, Applicants' claims recite detecting a session renewal. Furthermore, a session time limit is altered in response to detecting the session renewal.

Besides the defects of the Final Office Action itself, the Kaplan reference does not support a rejection of Applicants' claims. The Kaplan reference discusses management of a wireless connection to a database. More particularly, the reference discusses saving the state of a session of a user to enable the user to "reconnect to a session that was timed out" and allow the user to continue "at the same point within the database at which he or she was working before his or her connection timed out." See par. [0039].

Applicants note that as per Kaplan, a session is **closed**, and can later be reconnected, assuming the closure resulted from an inactivity period timing out. As Applicants have understood, there is no **session time limit** in the reference, in contrast to what is claimed. The session in Kaplan continues for as long as the connection is active. Thus, the session may be

opened indefinitely, and will be (automatically) closed **only if activity** falls to a threshold (zero) for a period of time (the inactivity timeout period). The automatic closing of the session for security purposes is about **inactivity**, or an activity level of the session, and **not a session time limit**. The inactivity results in closing the session when a fixed period of inactivity elapses. The inactivity period is not related to a length of the session itself. In contrast, Applicants' claims recite a **session time limit** associated with a **session**.

As an additional distinction over the cited reference, Applicants' claims recite a session renewal. As Applicants have understood the reference, nothing in the Kaplan reference could be interpreted by one of skill in the art as a session renewal as claimed. Furthermore, Applicants' claims recite altering a session time limit in response to detecting a session renewal. Given that Kaplan fails to support a rejection of a session renewal, the reference further fails to disclose or suggest altering the session time limit in response to detecting the session renewal, for at least the same reasons.

Thus, Applicants submit that the Office Action fails to set forth a complete rejection of the claims for failing to address at least one element of the claimed invention. Furthermore, the reference fails to support an interpretation that would support a rejection of the claims under the reference. For at least these reasons, Applicants submit that the independent claims are not anticipated by the cited reference.

Therefore, the Final Office Action fails to meet its burden to provide a *prima facie* case of anticipation, as per MPEP § 2131. The assertions in the Office Action fail to find support in the cited reference. Thus, Applicants submit that the final rejection of the claims is improper and respectfully request that the rejection be overturned and the claims allowed.

Respectfully submitted,

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